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LEE KHENG LIAN & ANOR v. LEE HAI & ORS

COURT OF APPEAL, PUTRAJAYA
KAMALUDIN MD SAID JCA
AZIZAH NAWAWI JCA
RAVINTHRAN N PARAMAGURU JCA
B [CIVIL APPEAL NO: N-02(NCVC)(A)-1301-09-2020]
13 OCTOBER 2022

Abstract – *(i) The High Court can only order a sale of any immovable property, pursuant to O. 31 r. 1 of the Rules of Court 2012, when there is a cause or matter relating to any immovable property and it appears necessary or expedient for the purposes of the cause or matter that the immovable property be sold. These elements must be fulfilled before O. 31 r. 1 could be invoked; and (ii) by virtue of the principle of stare decisis, High Court Judges are bound by all judgments of the Court of Appeal and the Federal Court and they must apply the law as stated therein.*

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LAND LAW: *Order for sale – Lands – High Court ordered for order for sale of lands by way of private sales or by auction – Proceeds of sales to be distributed according to registered shares – Whether application for order for sale fell or in compliance with O. 31 r. 1 of Rules of Court 2012 – Whether O. 31 r. 1 could be invoked – Whether there was cause or matter relating to any immovable property – Whether necessary or expedient for purposes of cause or matter that immovable property be sold – Whether there was basis or jurisdiction for High Court to order sale of lands under O. 31 r. 1*

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CIVIL PROCEDURE: *Courts – High Court – Doctrine of stare decisis – High Court elected not to follow binding decisions of Court of Appeal – Whether High Court fell into error*

G This was the appellants' appeal against the order of the High Court which, *inter alia*, ordered for the sale of 13 plots of land ('lands') by way of private sales or by auction at the market price and for the proceeds of the sales be distributed amongst the respondents and the appellants according to their registered shares in the said lands ('order'). The High Court further ordered
H that the private caveat on the lands be removed and set aside. The appellants were the legal and/or beneficial owners of a ¼ share in the lands which were all joined together. The respondents filed an originating summons ('OS') for an order for sale of the lands by private sales by auction at a market price. The appellants objected to the OS on the grounds that (i) the application for
I an order for sale did not fall or comply with O. 31 r. 1 of the Rules of Court 2012 ('ROC'); and (ii) the order for sale of the appellants' shares in the land amounted to deprivation of their property under art. 13 of the Federal

Constitution ('FC'). The High Court allowed part of the respondents' OS. Hence, the present appeal which was premised on the following grounds: (i) the order was incomprehensible and lacked clarity; (ii) the High Court formulated its own relief which was not prayed for by any party; (iii) the High Court failed to appreciate the law, applied the law wrongly and failed to appreciate the principles governing an application under O. 31 r. 1 of the ROC; (iv) the High Court failed to follow two decisions of the Court of Appeal, which it was bound to by the concept of *stare decisis* in construing O. 31 r. 1 of the ROC; and (v) the High Court fell into error in ordering the removal of the caveat as the second appellant had a caveatable interest in the lands premised on the declaration of trust. To date, the respondents failed to provide any cogent reasons for the removal of the caveat.

Held (allowing appeal)
Per Kamaludin Md Said JCA delivering the judgment of the court:

(1) The High Court could only order a sale of any immovable property pursuant to O. 31 r. 1 of the ROC, when there is a cause or matter relating to any immovable property and it appears necessary or expedient for the purposes of the cause or matter that the immovable property be sold. These elements must be fulfilled before O. 31 r. 1 of the ROC could be invoked. Order 31 r. 1 of the ROC did not and could not override the appellants' sacrosanct right to property in art. 13 of the FC. In order to exercise its power under O. 31 r. 1 of the ROC, the High Court must first have the jurisdiction to exercise its powers. Order 31. r. 1 of the ROC is not a blanket provision to empower the High Court to order the sale of any immovable property, particularly against the wishes of a proprietor of the land. In the absence of a cause or matter, O. 31 r. 1 of the ROC did not empower or give jurisdiction to the High Court to order the sale of land. (paras 29, 30 & 31)

(2) The question before this court was simple: was there any cause or matter relating to the lands? There was no cause or matter at the stage of the application. The High Court fell into error in not addressing this question. In other words, there was no cause or matter in existence between the contending parties. Consequently, there was simply no basis or jurisdiction for the High Court to order a sale of the lands under O. 31 r. 1 of the ROC. Further, the evidence adduced to justify the sale was tainted, hence failing to satisfy the factor of expediency and necessity. The respondents evidentially were still residing in the impugned immoveable property and the loan was being serviced as per the agreement by the respondents, hence rejecting the probability that the loan would be recalled and the property would be foreclosed. (paras 33 & 34)

(3) The decisions of the Court of Appeal in *Koh Heng Jin Holdings Sdn Bhd v. Phuah Beng Chooi & Anor* and *Chiu Kwan Yiu v. Thien Lip Ha & Anor* ('two Court of Appeal decisions') were binding on the High Court yet the High Court elected not to follow the said decisions. No reasons were given by the High Court for departing from the two Court of Appeal decisions. The High Court, in applying O. 31 r. 1 of the ROC, relied on the decision in *Tan Kok Chiang v. Tan Yaw Ti & Anor* ('*Tan Kok Chiang*'). The High Court in *Tan Kok Chiang* did not have the benefit of the two Court of Appeal decisions relating to the applicability of O. 31 r. 1 of the ROC. It was therefore open to the High Court (in *Tan Kok Chiang*) to adopt either one of the conflicting views. However, in the present appeal, the High Court did not have the same option under the doctrine of *stare decisis*. At the time the OS was filed, *Tan Kok Chiang* was no longer good law and the principle set out therein was already overruled by the two Court of Appeal decisions. (paras 41, 43 & 45)

(4) The High Court fell into error in its decision, failed to appreciate the law, applied the law wrongly and failed to appreciate the principles governing an application pursuant to O. 31 r. 1 of the ROC. (para 53)

Case(s) referred to:

Chitra Claire Pillai Joseph Sandra lwn. Noel John Bernatt [2016] 2 CLJ 78 HC ***(refd)***
Chiu Kwan Yiu v. Thien Lip Ha & Anor [2015] 1 LNS 1505 CA ***(refd)***
KK Kumaran v. TS Sambanthamurthi [1997] 2 CLJ 26; [1997] 2 BLJ 26 HC ***(refd)***
Koh Heng Jin Holdings Sdn Bhd v. Phuah Beng Chooi & Anor [2016] 3 CLJ 837 CA ***(refd)***
Leap Modulation Sdn Bhd v. PCP Construction Sdn Bhd [2018] 1 LNS 816 CA ***(refd)***
Periasamy Sinnappan v. PP [1996] 3 CLJ 187 CA ***(refd)***
Rubyna Kaur Surinder Singh v. Jasbir Singh Harbajan Singh [2004] 1 CLJ 347 HC ***(refd)***
Tan Kok Chiang v. Tan Yaw Ti & Anor [2009] 1 LNS 711 HC ***(refd)***
Yong Hin Seong & Anor v. Yong Teik Seong [2003] 1 LNS 697 HC ***(refd)***

Legislation referred to:

Courts of Judicature Act 1964, ss. 3, 25, Schedule para 3
Federal Constitution, art. 13
Probate and Administration Act 1959, s. 60
Rules of Court 2012, O. 31 r. 1

For the appellants - Rishwant Singh & Syukran Syafiq; M/s Cecil Abraham & Partners
For the respondents - Manian Raju & Raswanti Nagaindren; M/s Manian Raju & Assocs

[Editor's note: Appeal from High Court, Seremban; Originating Summons No: NA-24NCVC-238-08-2018 (overruled).]

Reported by Lina E

JUDGMENT

Kamaludin Md Said JCA:

Introduction

[1] This is the appellants' appeal against the order of the High Court dated 7 September 2020 which *inter alia* ordered that all the 13 Lots of lands (Lots 1811 to 1835) of Mukim Port Dickson to be sold by way of private sales or by auction at the market price and the proceed of the sales be distributed amongst the respondents and the appellants according to their registered shares in the said lands. The High Court further ordered that the private caveat dated 2 July 2014 on the said lands be removed and set aside.

[2] The appellants are the third and fourth defendants and the respondents are the first to fifth plaintiffs in the originating summons filed by the plaintiffs at the High Court. In the originating summons, the plaintiffs sought a sale of all the lands owned by all the plaintiffs and the third defendant.

[3] The appellants and the respondents have filed their written submissions and also made oral submissions before this court.

[4] In this appeal, the appellants contended that the High Court order dated 7 September 2020 which allowed the plaintiffs' originating summons was erroneous and clearly wrong in law based on the grounds submitted before us.

[5] The respondents contended that the High Court's decision is manifestly fair, just, rational and according to law after taking into consideration the factual matrix of this case.

[6] We have considered the submissions from the appellants and the respondents both oral and written and having also read the grounds of judgment of the learned High Court Judge and the records of appeals, we are satisfied that there is merit in the appellants' appeal. It is our finding that the order dated 7 September 2020 is erroneous and wrong in law.

[7] It is our unanimous decision that the appellants' appeal is allowed and the order dated 7 September 2020 is set aside with no order as to costs.

Background Facts

[8] The appellants are the legal and/or beneficial owners of a ¼ share in the 13 plots of land (the lands). All the lands are joining together planted with oil palm and rubber trees.

[9] The respondents filed an originating summons in encl. 1 for an order for sale of the lands by private sales or by auction at a market price. The proceeds of the sales shall be distributed amongst the respondents and the appellants according to their shares and on behalf of the estates of the deceased proprietors respectively and to the first respondent.

[10] The appellants objected to the originating summons for sale of the lands and removal of the caveat on the said lands on grounds that the application for an order for sale does not fall or comply with O. 31 r. 1 of the Rules of Court 2012 (ROC) and the order for sale of the appellants' shares in the land amount to deprivation of their property under art. 13 of the Federal Constitution. Further, O. 31 r. 1 of the ROC does not allow the court to order the sale of the lands as required by the respondents even on reason that the first respondent is sick and 85 years old.

The High Court Decision

[11] The High Court agreed with the respondents on account that the first respondent is the only living proprietor of the lands whereas the other respondents are the representative of the estates of the deceased proprietors. The court also considered that the majority shares *ie*, 5/8 shares in the lands belongs to the respondents. The appellants' share is only 3/8.

[12] The court also considered the age of the first respondent is 85 years old, the second respondent is 80 years old and the fifth respondent is 89 years old. The first respondent acquired the land in the seventies and became the administrator of the deceased estates since 2007. The other respondents became the administrators of the deceased estates in 2002, 2010 and 2014 respectively.

[13] The court also considered the subdivision of the lands according to their respective shares is very expensive and costly.

[14] The High Court disagreed with the appellants that the court has no power under O. 31 r. 1 of the ROC to order the sale of the property.

[15] The High Court was of the view that it has the jurisdiction and power to order the sale of the said lands relying on the High Court case of *Tan Kok Chiang v. Tan Yaw Ti & Anor* [2009] 1 LNS 711; [2009] MLJU 606 which says that the High Court has the power to order the sale of the property under O. 31 r. 1 of the ROC. In that case, Rhodzariah Bujang JC (as she then was) followed the decision by James Foong J in *KK Kumaran v. TS Sambanthamurthi* [1997] 2 CLJ Supp 26; [1997] 2 BLJ 26; [1996] 3 MLJ 309 which held that O. 31 r. 1 of the ROC is the relevant rule to exercise the power under para. 3 to the Schedule of the CJA. She did not follow the decision by Suriyadi J in *Rubyna Kaur Surinder Singh v. Jasbir Singh Harbajan Singh* [2004] 1 CLJ 347; [2003] 6 MLJ 753.

[16] The High Court in the present case also followed the decision of Abdul Malik J in *Yong Hin Seong & Anor v. Yong Teik Seong* [2003] 1 LNS 697; [2003] 6 MLJ 38 where His Lordship held that the court has the power to order the sale based on O. 31 r. 1 of the ROC and not on any provision of the National Land Code. The High Court also referred to another High Court

case of *Chitra Claire Pillai Joseph Sandra lwn. Noel John Bernatt* [2016] 2 CLJ 78; [2015] MLJU 663 which had ordered the sale of the property to resolve the dispute between the parties.

Order Of The High Court

[17] The High Court allowed part of the respondents' originating summons (encl. 1) by giving the appellants three options with regards to their shares in the lands as follows:

> (i) Penjualan kesemua harta di 13 lot berkenaan dan pihak-pihak Defendan diberi keutamaan membeli semula lot yang sama nilai dengan bahagian mereka dan segala kos ditanggung oleh pihak-pihak di dalam guaman ini secara sama rata jika nilai tanah berkurangan pihak Defendan 3 dan Defendan 4 dibayar dengan wang hasil jualan; atau
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> (ii) Sekiranya nilaian tanah ¼ milik Defendan 3 & 4 dapat dipersetujui semua pihak diketepikan tanpa jualan oleh itu bahagian Defendan 3 & 4 diketepikan dari mana-mana 13 lot tersebut dan jika berkurangan ditambah dengan wang hasil jualan lot-lot lain diberikan kepada Defendan 3 & 4 dan kos pindah milik kepada Defendan 3 & 4 ditanggung oleh hasil jualan lot-lot ini; atau
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> (iii) Sekiranya Defendan 3 & 4 gagal memilih antara dua pilihan di atas pihak Defendan 3 & 4 hendaklah diberikan wang hasil jualan 13 lot berkenaan mengikut bahagian mereka ¼ tersebut secara sama rata dengan pihak-pihak yang lain seperti mana Lamp. 1 di perenggan (a) dan (b).
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> (iv) Perintah seperti permohonan untuk perenggan (c) (i) dan (ii);
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> (v) Kaveat dibatalkan [perenggan (d)]
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> (vi) (e) perintah seperti mana permohonan sekiranya Defendan 3 & 4 enggan memberi kerjasama opsyen 3 dijalankan secara sebelah pihak dengan mana para (c) (ii) digunapakai.
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> (vii) Masing-masing pihak menanggung kos guaman ini [para (g)]

Grounds Of Appeal

[18] The appellants' appeal is premised on the following grounds:

(i) the order is incomprehensible and lacks clarity. Consequently, it is impossible for parties to give effect to the order;

(ii) the High Court formulated its own relief which was not prayed for by any party. Parties, the appellants especially, were, accordingly, not afforded the opportunity to address the High Court on the relief formulated. This is a breach of natural justice point;

(iii) the High Court failed to appreciate the law, applied the law wrongly and failed to appreciate the principles governing an application under O. 31 r. 1 of ROC;

(iv) the High Court failed to follow two decisions of the Court of Appeal in construing O. 31 r. 1 of ROC. The High Court was bound by the concept of *stare decisis* to follow the decisions of the Court of Appeal in construing O. 31 r. 1 of the ROC; and

(v) the High Court fell into error in ordering the removal of the caveat. In this regard, the second appellant has a caveatable interest in the lands premised on the declaration of trust. To date the respondents have failed to provide any cogent reasons for the removal of the caveat.

Analysis/Decision

[19] At the outset, we find the strongest point raised by the appellants in this appeal is with regard to the point of law on power or jurisdiction of the High Court to order for sale of the said lands or property under O. 31 r. 1 of the ROC.

[20] In respect of the issues of the order of court lacks clarity and the manner the order was formulated by the High Court Judge and including the order to remove the caveat on the said lands, in our view, the issues are secondary on reason that if the court agree with the appellants that the High Court was wrong or have no power to grant the order for sale of the property in the circumstances of this case, the order is liable to be set aside and the caveat is restored. If it is, otherwise, the order remains valid subject to parties applying to the High Court for further clarification of the said order.

[21] The crux of the issue is whether the respondents' sole application for a sale of all the lands can be granted by the High Court. It is not disputed that the prayers in the plaintiffs' originating summons is for sale of the said lands on reasons of geographic location and its large area and the respondents as the proprietors and executors' estates of the deceased proprietors are very old.

[22] Thus, the argument is centred on the powers of court in O. 31 r. 1 of the ROC, para. 3 of the Schedule, s. 3 and s. 25 of the CJA and the authorities submitted by the appellants.

[23] Order 31 r. 1 of the ROC provides as follows:

> Where in any cause or matter relating to any immovable property it appears necessary or expedient for purposes of the cause or matter that the property or any part thereof should be sold, the court may order that property to be sold, and any party bound by the order and in possession of that property or part, or in receipt of the rents and profits thereof, may be compelled to deliver up such possession or receipt to the purchaser or to such other persons as the court may direct.

[24] The power in O. 31 r. 1 of ROC is conferred by s. 25 of CJA read together with para. 3 of the Schedule (see *Yong Hin Seong & Anor v. Yong Teik Seong* [2003] 1 LNS 69; [2003] 6 MLJ 38).

[25] Paragraph 3 of the Schedule of the CJA reads as follows: A

> Power to direct a sale instead of partition in any action for partition of land; and in any cause or matter relating to land, where it appears necessary or expedient, to order the land or any part thereof to be sold, and to give all the necessary and consequential directions.

[26] The phrase "appears necessary or expedient" means "in the context of the cause or matter". It must appear vital that the property be sold for the purpose of the cause or matter and not for the needs of the parties to the cause or matter (see: *Rubyna Kaur Surinder Singh v. Jasbir Singh Harbajan Singh* (*supra*), at pp. 761 to 762 which was subsequently affirmed by the Court of Appeal in *Koh Heng Jin Holdings Sdn Bhd v. Phuah Beng Chooi & Anor* [2016] 3 CLJ 837. B C

[27] The terms "cause" and "matter" are defined in s. 3 of the JCA as follows:

> "cause" includes any action, suit or other original proceeding between a plaintiff and defendant, and any criminal proceeding; "matter" includes every proceeding in court not in a cause. D

See also: *Chiu Kwan Yiu v. Thien Lip Ha & Anor* [2015] 1 LNS 1505; [2015] MLJU 2157.

[28] The High Court in *Rubyna Kaur Surinder Singh v. Jasbir Singh Harbajan Singh* (*supra*) held that the application of O. 31 r. 1 of ROC in the absence of an existing cause or matter is in contravention of the law or rules of court: E

> I now touch on question (ii). As O. 31 speaks succinctly of the existence of the precondition of cause or matter, and unless that precondition is established first, any application would face certain rejection at the outset. What then is cause or matter in the context of this order? Under s. 3 of the CJA, the interpretation of cause includes 'any action, suit or other original proceeding between a plaintiff and defendant, and any criminal proceeding, whilst matter would include 'every proceeding in court not in a cause'. *Black's Law Dictionary* defines cause as 'a suit, litigation, or action. Any question, civil or criminal, litigated or contested before a court of justice'. As regards 'matter' Black defines it as 'substantial facts forming basis of claim or defence; facts material to issue; substance as distinguished from form; transaction, event, occurrence, subject-matter of controversy'. Despite the wide scope of the words cause and matter or because of it, as defined by the CJA and Black (as the terminology includes is adverted to), *I was satisfied that these two words must relate to some existing court proceedings pertaining to the impugned property within the context of O 31. Without mincing words, prima facie if there are no court proceedings, not necessarily confined to actions filed by the contending parties, then justification of necessity or expediency of that intended sale does not exist*. From the evidence, and also admitted by both parties, I had managed to gather that there was no cause or matter in relation to the impugned property having been filed in court in whatever form, *eg*, a separation or even divorce proceedings by F G H I

A the contending parties or any litigation taken up even by an interested third party anywhere in Malaysia. On that score, bearing in mind that the additional powers 'shall be exercised in accordance with any written law or rules of court', and as the applicant had failed miserably as regards a pertinent requirement, she already at the opening stage was hard pressed to convince me. *To avoid any uncertainty, I must unhesitatingly state that as I*
B *had found no cause or matter at the stage of the application, to grant the application would mean exercising the powers of sale in contravention of any written law or rules of court relating thereto*.

As regards the third question (iii), even if there was a cause or matter, the applicant had failed to prove that it appeared necessary or expedient to
C order the sale. The requirement of appears necessary or expedient, which must be read in the context of the cause or matter, must surely mean that in the context of that scenario, it must appear vital or something which is required that the property be sold ... I was and am still of the view that whether it appears necessary or expedient, must be considered from every aspect, and not merely tailored to the solitary opinion and needs of the
D applicant. In fact, *O. 31 in clear terms legislated that the property be sold 'for the purpose of the cause and matter' and not the applicant or respondent's needs*. To wind up this poser, not only a vacuum existed as regards the existence of a cause or matter, but even the grounds supplied by the applicant too were weak, speculative and tainted.

E (emphasis added)

[29] From the above, it is clear that the High Court can only order a sale of any immovable property pursuant to O. 31 r. 1 of the ROC when there is a cause or matter relating to any immovable property and it appears necessary or expedient for the purposes of the cause or matter that the
F immovable property be sold. These elements must be fulfilled before O. 31 r. 1 of the ROC can be invoked. We agree with the appellants that O. 31 r. 1 of the ROC does not and cannot override the appellants' sacrosanct right to property in art. 13 of the Federal Constitution.

[30] In order to exercise its power under O. 31 r. 1 of the ROC, the High
G Court must first have the jurisdiction to exercise its powers. Order 31 r. 1 of the ROC is not a blanket provision to empower the High Court to order the sale of any immovable property particularly against the wishes of a proprietor of the land. In the absence of a cause or matter, O. 31 r. 1 of the ROC does not empower or give jurisdiction to the High Court to order the
H sale of land.

[31] On the facts of the present case, as alluded to earlier that the respondents' reasons to sell the unsub-divided land is because of the age of the proprietors and executors of the estates and the subdivision of the lands is a difficult and expensive process. No other reasons or justification for the
I sale of the appellants' land was given by the respondents.

[32] The appellants have submitted that these are not valid reasons for the appellants to part with their interest in the land. And, more importantly, the High Court has no jurisdiction to order the sale of the appellants' interest in the land for such reasons. Therefore, the respondents' reliance on O. 31 r. 1 of the ROC was misconceived.

[33] We agree with the appellants that the question before this court is simple: is there any cause or matter relating to the lands? We find there is no cause or matter at the stage of the application. In our view, the High Court fell into error in not addressing this question. In other words, there was no cause or matter in existence between the contending parties. Consequently, there is simply no basis or jurisdiction for the High Court to order a sale of the lands under O. 31 r. 1 of the ROC.

[34] Further, as submitted by the appellants, the evidence adduced to justify the sale was tainted, hence failing to satisfy the factor of expediency and necessity; the respondents evidentially were still residing in that impugned immoveable property and the loan was being serviced as per the agreement by the respondent, hence rejecting the probability that the loan would be recalled and the property foreclosed.

[35] The Court of Appeal in *Koh Heng Jin Holdings Sdn Bhd v. Phuah Beng Chooi & Anor* (*supra*) affirmed *Rubyna Kaur*. Koh Heng Jin concerned an application by the plaintiff to compel the defendants to sell their 1/3 share of the property to the plaintiff which is not unlike the facts of the present Appeal. The Court of Appeal held that the plaintiff's real claim was in relation to rent and thus was not a "cause or matter in relation to land":

> [31] We agree that the phrase "in any cause or matter relating to land" in the said para. 3 confers power on the court to order the land or any part thereof to be sold, in actions other than for partition of land. *However, in our view the phrase "and in any cause or matter relating to land" in the said para. 3 and "in any cause or matter relating to immoveable property" in O. 31 r. 1 of the RC is not applicable in the present case as the said OS is not a cause or matter pertaining to property within the context of O. 31 r. 1* (per Suriyadi J in *Rubyna Kaur Surinder Singh v. Jasbir Singh Harbajan Singh* [2004] 1 CLJ 347; [2003] 6 MLJ 753).
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> [32] The said OS was filed pursuant to the refusal of the said Koh Heng Huat to accept the plaintiff's proposal for the creation of a tenancy and the imposition of rental in the sum of the RM30,000.00 and the subsequent non-response of the defendants to the aforesaid proposal.
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> [33] Although the plaintiff's prayer in the said OS is for an order that the defendants' 1/3 undivided share in the said property be sold and transferred to the plaintiff under s. 25 of the CJA read together with the said para. 3 and O. 31 r. 1 of the RC, it can be seen from the exchange of letters between the parties and the said Koh Heng Huat that the real issue here is the issue of rental.
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> (emphasis added)

[36] It is important to note that a dispute between the parties as to whether the lands ought to be sold does not come within the ambit of O. 31 r. 1 of the ROC. If there was any dispute on this point, it has been laid to rest by the Court of Appeal in *Chiu Kwan Yiu v. Thien Lip Ha & Anor* [2015] 1 LNS 1505; [2015] MLJU 2157. See paras [14] to [18]:

> [14] This brings us to the second part of the paragraph 3 of the Schedule which refers to "cause or matter relating to land". During the hearing we asked counsel for the respondents what "cause or matter relating to land" did the respondents premise their application on? Learned counsel conceded there was no such cause or matter **except to say that there is a dispute between the parties as to whether the land should be sold**. With respect that is not the law as we see it.
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> [15] The words "cause" and "matter" are defined in s. 3 of the Courts of Judicature Act 1964. The word "cause" is defined to include "any action, suit or other original proceeding between the plaintiff and defendant, any criminal proceeding." The word "matter" is defined as including "every proceeding in court not in cause".
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> [16] We are satisfied that the manner in Paragraph 3 of the Schedule to the Courts of Judicature Act 1964 is structured and taking into consideration of the definition of the aforesaid words, **there must be an independent cause of action by the respondents before they can ask the court to invoke the re/let official sale**. In the context of this case and from the affidavit-in-support of their application, the respondents must either sue for payment of rental or possession of the land premised on some sort of agreement or understanding between the joint owners of the land as to the rights and obligations of the same.
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> [17] From the originating summons, the relief sought for was for the following order:
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> > The plaintiff be at liberty to sell the single storey warehouse held under CLO15304220, Lot 15805 known as Lot 17, Jln Tongkuzu, Kota Kinabalu (the said Property) by public auction and that the plaintiff be and the defence at liberty to bid at the public auction.
>
> With respect this is not a "cause or matter relating to land" as envisaged in paragraph 3 of the Schedule to the Courts of Judicature Act 1964.
>
> [18] *Prima facie*, the respondents as joint owners of the land of course are entitled to some rights for rental and possession and they can demand for the same. *Only when the appellant refuses to comply the aforesaid demands resulting in the respondents taking out legal proceedings to enforce the same will exist a "cause or matter relating to land". It is only in such circumstance that the courts are clothed with the jurisdiction to order a judicial sale and only when it is "necessary and expedient" in the circumstances*.
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> (emphasis added)

[37] In *Chiu Kwan Yiu*, the only relief sought in the originating summons was an order for the sale of the land. The Court of Appeal held that this was not a cause or matter relating to the land. The application in *Chiu Kwan Yiu* was dismissed by the Court of Appeal as there was no cause or matter relating to the immovable property.

[38] It is reiterated that in this case, the only relief sought by the respondents is an order for a sale of the lands. The respondents are seeking an order for the lands to be sold on the grounds of old age of the first respondent; and that the first appellant refuses to sell their share in the lands. In our considered view, these are not grounds to invoke O. 31 r. 1 of the ROC. The Court of Appeal in *Chiu Kwan Yiu* expressed succinctly that "there must be an independent cause of action by the respondents before they can ask the court to invoke the relief of judicial sale."

[39] The respondents have also failed to demonstrate that it is necessary or expedient in the present circumstances to order a sale of the lands. In *Rubyna Kaur* the High Court held:

> The requirement of appears necessary or expedient, which must be read in the context of the cause or matter, must surely mean that in the context of that scenario, *it must appear vital or something which is required that the property be sold* (see *Services Ltd v. Wong Liang Toon & Ors* [1959] MLJ 17, *Re Tan Tye Decd, Estate & Trust Agencies (1927) Ltd v. Tan Lian Chye & Ors* [1957] MLJ 114; *Si Rusa Inn Sdn Bhd & Ors v The Collector of Land Revenue Port Dickson & Ors* [1987] 1 MLJ 147). I was and am still of the view that *whether it appears necessary or expedient, must be considered from every aspect, and not merely tailored to the solitary opinion and needs of the applicant. In fact, O. 31 in clear terms legislated that the property be sold 'for the purpose of the cause and matter' and not the applicant or respondent's needs*.
>
> (emphasis added)

[40] The respondents' application for an order to sell the lands must be necessary and expedient for the purposes of the cause or matter. We agree with the appellants that on the present facts there is no other cause or matter in any court in respect of the lands. This is not in dispute. Absent a cause or matter, it accordingly follows that the respondents are unable to demonstrate that it is necessary and expedient for the High Court to order a sale of the lands.

[41] We agree with the appellants that the decisions of the Court of Appeal in *Koh Heng Jin* and *Chiu Kwan Yiu* was binding on the High Court yet the High Court elected not to follow the said decisions. The High Court, in applying O. 31 r. 1 of the ROC, relied solely on the decision in *Tan Kok Chiang v. Tan Yaw Ti & Anor* (*supra*). In *Tan Kok Chiang*, Rhodzariah Bujang JC (as she then was) was tasked with deciding between two conflicting High Court decisions in relation to O. 31 r. 1 of the ROC:

A In arriving at this decision, I respectfully declined to follow the decision of Suriyadi Halim Omar J's decision (as His Lordship then was) in *Rubyna Kaur Surinder Singh v. Jasbir Singh Harbajan Singh* [2004] 1 CLJ 347 cited by Ms. Stephanie Chin and find support in the decision of Abdul Malik J (as His Lordship then was) in *Yong Hin Seong & Anor v. Yong Teik Seong* [2003] 6 MLJ 38 the facts of which case is not unlike the present one
B before me. In that case 2 brothers also could not agree on the amount of rentals which one must to pay to the other. Abdul Malik J decided that an order for sale of the land should be made to resolve the impasse between the parties. His Lordship held that he has the power to order the sale based on the provisions of law I quoted earlier and not on any provision of the National Land Code.

C With respect to the decision in *Rubyna*'s case (*supra*) I do not think there is a necessity for there to be an existing court proceeding other than the action filed by the plaintiff in order for the court to exercise the power to order the sale.

D **[42]** At this stage, the following should be noted:

(i) *Tan Kok Chiang* was decided by the High Court on 30 July 2009; and

(ii) *Koh Heng Jin* (which affirmed *Rubyna Kaur*) was decided by the Court of Appeal on 13 January 2016 whilst *Chiu Kwan Yiu* was decided by the Court of Appeal on 26 June 2015.

E **[43]** From the above, it is readily apparent that the High Court in *Tan Kok Chiang* did not have the benefit of the two separate Court of Appeal decisions relating to the applicability of O. 31 r. 1 of the ROC. It was, therefore, open to the High Court to adopt either one of the two conflicting views. In the
F present appeal, the High Court did not have same option under the doctrine of *stare decisis*. At the time the originating summons was filed in 2018, *Tan Kok Chiang* was no longer good law and the principle set out therein was already overruled by the Court of Appeal in *Koh Heng Jin* and *Chiu Kwan Yiu*.

G **[44]** We agree with the appellants that a reading of the grounds of judgment indicates that the High Court was aware of the fact that the decision *Rubyna Kaur* was affirmed by the Court of Appeal in *Kok Heng Jin*:

[3] Defendan Ke 2 tidak memfailkan sebarang Afidavit Jawapan. Manakala Defendan 3 dan Defendan 4 [Def 3 & 4] membantah
H permohonan Plaintif-plaintif [PIf-PIf] untuk menjual 13 lot hartanah dan membatalkan kaveat persendirian ini atas alasan bahawa Aturan 31 Kaedah 1 KKM 2012 membawa maksud 'appears necessary or expedient' adalah dalam konteks 'cause or matter relating to any immovable property' atas keperluan hartanah tersebut dijual bukannya untuk keperluan pihak-pihak dengan merujuk kepada kes *Rubyna Kau v. Jasbir*
I *Singh* [2003] 6 MLJ 753 dan dikatakan mengikat Mahkamah ini dengan keputusan Mahkamah Rayuan yang bersetuju dengan kes *Rubyna Kaur* di dalam kes *Koh Heng Jin Holdings S/B v. Phuah Beng Chooi* [2016] 3 CLJ 837.

[45] We also agree with the appellants that the High Court elected not to follow the two decisions of the Court of Appeal which were binding on the High Court. No reasons were given by the High Court for departing from the two decisions of the Court of Appeal.

[46] In *Periasamy Sinnappan v. PP* [1996] 3 CLJ 187; [1996] 2 MLJ 557 the Court of Appeal held that it does not augur well for judicial discipline when a High Court Judge treats the decision of the Supreme Court with little or no respect in disobedience to the well-entrenched doctrine of *stare decisis*. We trust that the occasion will never arise again when we have to remind High Court Judges that they are bound by all judgments of this court and of the Federal Court and they must, despite any misgivings a judge may entertain as to the correctness of a particular judgment of either court, apply the law as stated therein (see also: *Leap Modulation Sdn Bhd v. PCP Construction Sdn Bhd* [2018] 1 LNS 816; [2018] MLJU 773)

[47] We noted that the High Court had also referred to the decisions in *Chitra Claire Pillai Joseph Sandra v. Noel John Bernatt* (*supra*) where an application for an order for sale was allowed in *Chitra Claire*. The appellants submitted that this authority may be distinguished. We agree with the appellants.

[48] In *Chitra Claire Pillai Joseph Sandra v. Noel John Bernatt* (*supra*), the High Court accepted the decision of the Court of Appeal in *Chiu Kwan Yiu v. Thien Lip Ha & Anor* (*supra*) that there must be an independent cause of action before O. 31 r. 1 of the ROC can be invoked. On the facts of *Chitra*, the parties therein were involved in a divorce proceeding in a UK Court. The property therein was a subject of their marriage assets. In those circumstances, the High Court held that the divorce proceedings in the UK satisfied the requirement of a pre-existing "cause or matter relating to the land" (see para. [40] of the report); The High Court did not dispense with the requirement of a pre-existing cause or matter relating to the land. On the contrary, the High Court found that there was in existence a cause or matter relating to the land, thereby fulfilling the requirements of O. 31 r. 1 of the ROC 2012. Thereafter, the High Court considered whether it was necessary and expedient to order the sale of the land.

[49] From the above, it is readily apparent that the High Court in *Chitra* did not disregard the express requirements of O. 31 r. 1 of the ROC.

[50] We agree with the appellants that in the present case, there is no cause or matter pending in any court in respect of the lands. This is fortified by the fact that the originating summons and the affidavit in support do not refer to any pending cause or matter in any court. The pre-requisite of the existence of a cause or matter has not been fulfilled. Consequently, there is no basis for the respondents to rely upon O. 31 r. 1 of the ROC.

A **[51]** We have considered the respondents' argument that their reliance on s. 60 of the Probate and Administration Act 1959 (the Act) evidences a cause or matter relating to the lands is misconceived. We agree with the appellants that s. 60 of the Act merely relates to the power of a personal representative to dispose of property of the deceased. It is not, in itself, a cause or matter
B within the meaning of s. 3 of the JCA. Consequently, O. 31 r. 1 of the ROC is not applicable on the present facts. The High Court, fell in to error in ordering the sale of the lands.

Conclusions

C **[52]** For all intents and purposes, it appears that the respondents' only concern is the apparent impracticality of subdividing the lands. Put another word, the plaintiffs have come to the High Court simply because it is convenient to do so when the appellants do not wish to sell their shares in the lands. On the facts, we find there was no cause or matter pending in any court in respect of the lands.

D **[53]** For the above reasons, we are satisfied that the High Court Judge fell into error in his decision. The High Court failed to appreciate the law, applied the law wrongly and failed to appreciate the principles governing an application pursuant to O. 31 r. 1 of the ROC.

E **[54]** Wherefore, the appeal is allowed with no order as to costs.

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